K.S.R. T015

1941

File No. O. Motor Vehicles 47

Legal DEPARTMENT

A BRANCH

Subject:—

Fairies under the Territorial Motor Vehicles Act, 1939.

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C O N T E N T S

Legal Department File No. O. Motor Vehicles /1947

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5 C.

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11/5

IV

Office of the R.L.A.

It is desirable to leave full discretion to the Magistrates to decide the order in which they should try cases. The view taken by the Secretary, H.D. at p. 38 ante is correct.

Sd/-

O.C. D.V. Vyas.

Remembrancer of Legal Affairs

U.H. to H.D., No 122 dated the 6th January 1947

Mjr/9/5

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Office of the R.L.A.

The powers of the Regional Transport Authority to inflict departmental punishments on the drivers of public service Vehicles etc. cannot be delegated to its Secretary under rule 48(2) of the Bombay Motor Vehicles Rules, 1940 as that rule provides for making by-laws to regulate the conduct of its business. The suggestion of the chirman, R.T.A. is not feasible.

In the absence of any statutory authority the power to inflict punishment cannot be delegated to any authority. The suggestion made in the last para. of Secretary, P.T.A's note at p. 9 and cannot be adopted.

Sd/-

o.c. D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to H.D., No. 1255, dated the 7th February 1947.

Mjr/9/5

4 C.

It is true that rule 100(2) and (3) of the Bombay Motor Vehicles Rules, 1940, empowers Motor Vehicles Officers to stop a vehicle to see that the provisions of the Motor Vehicles Act and the rules are not contravened; but that rule 100 being one of the rules made under section 68(2) in Chapter IV of the Act, the power to stop a vehicle thereunder would be limited to the enforcement of the provisions relating to the inspection of transport vehicles and their contents and would not include the power under section 106(1) in Chapter VIII of the Act. Consequently unless the power of a police officer under section 106(1) is delegated to Motor Vehicles Officers by a rule made under section 133-A(3), it would not be competent for Motor Vehicles Officers to demand the production of certificate of insurance under section 106(1)

Sd/-

O.C. D.V.Vyas.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 3472 dated the 10th April 1947

Mjr/9/5

4 C.

The question raised for R.L.A's consideration is whether a motor vehicle which is registered as a light motor vehicle and is subsequently converted into a heavy transport vehicle would on such conversion be liable to pay the additional registration fee perscribed for heavy motor vehicle.

Sub-section (1) of section 22 of the Motor Vehicles Act, 1939, provides that no person shall drive any motor vehicle and no owner of a motor vehicle shall cause or permit the vehicle to be driven in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered in accordance with Ch. III and the certificate of registration of the vehicle has not been suspended or cancelled etc. Under section 23, subject to the provisions of section 25 and section 39, every owner of a motor vehicle shall cause the vehicle to be registered by a registering authority in the province in which he has the residence or place of business where the vehicle is normally kept. Sub-section (1) of section 24 provides that an application by or on behalf of the owner of a motor vehicle for registration shall be in Form E as set forth in the First Schedule, and shall contain the information required by that Form, and shall be accompanied by the prescribed fee.

The registering authority shall then--

(i) issue to the owner a certificate of registration inForm G as set forth in the First Schedule (see sub-section(2) of section 24); and

(ii) assign to the vehicle, for display thereon in the prescribed manner, a distinguishing registration marks (see sub-section (3) of section 24).

The registration fees for the various types of vehicles are prescribed in rule 34(1) of the Bombay Motor Vehicles Rules,

1940.

Under section 28(1), a motor vehicle registered in accordance with Ch.III shall not require to be registered elsewhere in British India and a certificate of registration issued or in force under this Act in respect of such vehicle shall be effective throughout British India. Sections 33 and 34 respectively provide for suspension and cancellation of the certificate of registration of the vehicle. It is clear that the certificate of registration issued by a registering authority shall be effective throughout British India until it is suspended or cacelled.

Under sub-section (1) of section 32 if a motor vehicle is so altered that the particulars contained in the certificate of registration are no longer accurate, the owner of the vehicle shall, within fourteen days of the making of any such alteration, report the alteration to the registering authority within whose jurisdiction he resides, and shall forward the ~~to the registering authority within whose~~ certificate of registration to that authority together with the prescribed fee in order that ~~cartucykars~~ particulars if the alteration may be entered therein. Section 32(1) makes it clear that even though prescribed registration fee under rule 34 of the Bombay Motor Vehicles Rules, 1940, has been paid in respect of a vehicle and a certificate/~~x~~for registration has been obtained from the registering authority under section 28(2), still when such a vehicle is so altered that particulars mentioned in such certificate are no longer accurate, on reporting the alterations to the registering authority it is open to such authority to

enter the particulars of the alterations in the certificate of registration on payment of the prescribed fee. Under clause (f) of sub-section (2) of section 41, the Provincial Government can make rules providing for the fees to be charged for the issue or alteration of certificates of registration, for certificates of fitness etc. Rule 34 of the Bombay Motor Vehicles Rules, 1940, which is made in pursuance of the rule making power under clause (f) of section 41(2), however, provides inter alia that there shall be no fee for--

(i) the assignment of a new registration mark under section 29 of the Act,

(ii) Recording change of addresses of the owner under section 30, or

(iii) recording an alteration to the motor vehicle under section 32 of the Act.

Consequently, in view of the specific provision made in rule 34(3), the additional registration fee for entering the particulars of the alteration in the certificate of registration under section 32(1) cannot be levied by the registering authority. The only course feasible to carry out the objection which the Provincial Motor Transport Controller has in view, is to suitably amend sub-rule (3) of rule 34 of the Bombay Motor Vehicles Rules, 1940.

Sd/-

O.C. D.V.Vyas

Remembrancer of Legal Affairs.

U.R. to H.D., No. 3789, dated the 17th April 1947

Mjr/9/5

4 C.

Under section 46(b) of the Motor Vehicles Act, 1939 (IV of 1939) an application for a permit to use a motor vehicle as a stage carriage, is to contain inter alia particulars re route or routes on which or the area within which it is intended to use the vehicle. Under section 48(d), a Regional Trnasport Authority may, after consideration of the matters set forth in sub-section (1) of sectio 47, attach to a stage carriage permit any prescribed condition or any one or more of the following conditions, namely:-

(i) that the service specified in the permit shall be commenced not later than a specified date and be continued for a specified period;

(ii) that the service may be varied in accordance with the specified conditions;

(iii) that the stage carriage or stage carriages shall be used on specified routes or in a specified area etc.

Under section 2(21) of the said Act, "Prescribed" means Prescribed by rules made under the said Act. If, therefore, after consideration of the matters set forth in clauses (a), (b) and (c) of sub-section (1) of section 47, the Regional Transport Authority considers that a condition to the effect no stage carriage permit holder shall refuse to run his buses on any route as may be directed by the Regional Transport Authority in addition to the routes for which the permit is applied for and granted by the Regional Transport Authority, such a condition can be prescribed under section 48(d), read with section 68(2) (zz) of the said Act, provided a rule to that effect is first made, but not otherwise.

Sd/- P.N. Lad
11/6

o.c.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 6129,

Dated the 13th June 1947

Mjr/9/5

4C.

Sub-section 2(c) of section 70 of the Motor Vehicles Act, 1939 (IV of 1939) authorises the Provincial Government to make rules giberning the size, nature and condition of tyres, in respe t of motor vehicles or trialers generally or in respect of motor vehicles or trailors of a particular class or in particular circumstances, It is presumed that steam wagon or wagons with solid tyres belonging to the Bombay Port Trust or such other Institutions as may be notified by Government from time to time, are motor vehicles within the meaning of section 2(18) of the said Act; the concluding portion of the said clause does not apply to such vehicles when they are used solely upon the premises of the owner e.g. Port Trust Roads and dock area, but the said areas are public places within the meaning of section 2(24) of the said Act. Under sub-rule (3) of rule 115 of the Bombay Motor Vehicles Rules, 1940 tractors, locomotives, road rollers or tracklying vehicles are excluded from the operation of the said sub-rule which prohibits motor vehicles to be driven in any public place unless they are fitted with pneumatic tyres. Steam wagon or wagons belonging to the Port Trust do not form a particular class nor would such wagon or wagons of such other institutions as may be notified by Government from such class. Consequently it would not be legally feasible to amend rule 115(3) excluding from its operation the wagon or wagons of the Port Trust and of such other institutions as may be notified by Government. However, it would be possible to amend the rule excluding from its operation the wagon or wagons of the Port Trust so long as such wagon or wagons operate on the Port Trust Roads and dock area as being in particular circumstances.

Sd/- P.M. Lad 11/6

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D., No. 6128, dated the 13th June 1947;

Mjr/10/8/

4 C.

Sub-section (1) of section 22 of the Motor Vehicles Act, 1939, (IV of 1939) provides for registration of motor vehicles, but under sub-section(2) thereof the provisions of registration of motor vehicles in Chapter III, are not to apply to motor vehicles in the possession of dealers which are exempted under rule 43 of the Bombay Motor Vehicles Rules, 1940, which is made under section 41(2)(k) of the said Act. The said rule 43 provides that section 22 of the said Act shall not apply to a motor vehicle in the possession of a manufactureer of, or dealer in, motor vehicles in the course of the business of the manufacturer or dealer so long as it is used under the authorisation of a trade certificate, granted by the registering authority within whose are the manufacturer or dealer has his place of business. On receipt of the application in Form T.C.A. for a trade certificate under sub-rule(2) of rule 43, the registering authority grants him the trade certificate in Form T C and assigns to him a series of Trade Registration marks. However, sub-rule (8) of rule 43 lays down seven conditions subject to which the trade certificate is to be used upon any motor vehicle. As under rule 1 of the Bombay Motor Vehicles Rules, 1940, the said rules apply to and in relation to, all motor vehicles in the Province of Bombay, rule 43 cannot have extra provincial validity. (cf..section 28 of the Act, which does not apply to trade certificates under section 22(2)). The trade ~~trade~~ certificate granted under rule 43 will therefore operate in the Province of Bombay. Accordingly, the view taken by the Provincial Motor Transport Controller in his letter No. 190, dated 12-10-1946 at. 1, that the trade certificates granted under ruled 43 have no validity outside the Province of Bombay appears to be correct.

The next question for consideration is whether a Bombay Trade certificate can legally be used in a place as near as Poona. It appears that there can be no legal objection to such use provided the vehicle is u sed for any of the purposes mentioned in clauses (i) to(Vii) of rule 43(8).

Sd/- P.M.Lad. 13/6/

O.C.Remembrancer of Legal Affairs

U.R.to H.D., No. 6158 ., dated the 13th June 1947

Mir/9/5 (AC.

It would not be inferred, for instance, from the grant of a jurisdiction to a new tribunal over certain cases that the Legislature intended to deprive the Superior Court of the Jurisdiction which it already possessed over the same cases. Thus, an Act which provided that if any question arose upon taking a distress it should be determined by a Commissioner of taxes would not thereby take away the jurisdiction of the High Court to try an action for an illegal distress. Nor would that Court be ousted of its preventive jurisdiction to stop by injunction the misapplication of poor rates by reason of the statutory power given to the Poor Law Commrs. to determine the propriety of all such expenditure (see Maxwell p. 115).

A Provincial Transport Authority and a Regional Transport Authority constituted under section 44(1) of the Motor Vehicles Act, 1939, are required to exercise and dishcharge certain powers and functions specified in the Act and appeals from their decisions will lie to the Provincial Government fromxth (see section 64, read with rules 75 and 76 of the Bombay Mot Vehicles Rules, 1940). Although the hurisdiction of the Court is not expressly excluded, it appears to have been impliedly ousted in all matters in which the Provincial and Regional Authorities are vested with powers under the Act; but that would not preclude the Court's jurisdiction to prevent the misapplication of the provisions of the Act.

These provisions do not exclude the Courts' power to adjudicate questions which are material to the matters coming within the purview of the Transport Authorities and their appellate Tribunals, as e.g. the questions canvassed by Mr. Deshpande in a Civil Court. In cases where the court has given injuction it would not be open to the Provincial and Regional Authorities to enforce their decisions until and unless the injuction is vacated by the Court. In other cases, the proceedings before the Transport Authorities and their Appellate Tribunals need not be stayed. The party affected may, if so advised, obtain an injunction; if he chooses to remain inactive, the Authority or Tribunal is justified in

taking the proceedings to a decision provided no administrative inconvenience is likely to result by such decisions having t be revised in the light of the Civil Courts' decree. The view taken by Secretary, Home Department is correct.

Sd/- P.M.Lad
5-9-1947

o.c.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 9025
dated the 5th September 1947

Mjr/10/5/
4 C.

There appears to be no law or rule which requires that cases of accidents whether medico-legal or not should necessarily be taken by the Police or any body else to Government or Municipal hospital and not to a private nursing home or hospital even if the patients themselves or their relations so demand; nor is there any statutory provision empowering the Police even in cognizable case to insist on the person involved in the accident being taken against his wish to a Government hospital or dispensary in the first instance for an assessment of injuries. In fact, in cases of accidents in which a motor vehicle is involved, Section 89 of the Motor Vehicles Act imposes a duty upon the driver or person in charge of the vehicle to convey the injured person, if necessary, to the nearest hospital, and not necessarily to a Government or Municipal hospital.
Section 509 of the Criminal Procedure Code also provides:

(1) The deposition of a civil surgeon or other medical witness taken and attested by a Magistrate in the presence of the accused or taken on commission under Chapter XL may be given in evidence in any inquiry, trial or other proceeding under this Code although the deponent is called as a witness.

(2) The Court may, if it thinks fit summon and examine such deponent as to the subject-matter of his deposition.

This provision which does not appear to exclude the evidence of private medical practitioners at criminal trial supports the view expressed above. It is only on the ground of convenience and for the prompt attention and reliable and independent assessment of injuries and diagnosis available at Government hospitals and dispensaries that the Police have been ordered to

follow the practice of sending the patients in the medico-legal and other case to Government hospitals and dispensaries.

Sd/-
P.M.Lad
29/8/

oc.

Remembrancer of Legal Affairs.

U.R. to H. &L.G.D., No. 8825, dated the 30th August 1947

Mjr/10/5/
4 C.